



TENNESSEE DEPARTMENT OF EDUCATION
Andrew Johnson Tower
Nashville, TN 37243

Section 504 Manual

A comprehensive guide for Local Education Agencies on
Section 504 of the Rehabilitation Act of 1973

January 2011

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It is the policy of the State Board of Education and a priority of the Tennessee Department of Education that there will be no discrimination or harassment on the grounds of race, color, sex, marital status, religion, national origin, age or disability in any educational programs, activities, or employment.

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Nashville, Tennessee 37243

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Acknowledgment

The purpose of this manual is to develop a guide for local education agencies (LEAs) so that they may be aware of their obligations under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Americans with Disabilities Amendments Act of 2008 (ADAA). The manual shall serve to give guidance to the local Section 504 Coordinators, ADA Coordinators, and staff and other agencies serving children with disabilities to the on-going functions of Section 504 and Title II.

The sincere hope is that the efforts of the authors of this manual will take some of the mystery out of Section 504, and that LEAs will more fully understand their responsibilities. This manual will also provide guidance to local school districts as they develop their own policies which are required of a board of education by federal laws. The specific requirements of this manual are mandated by Section 504 and not necessarily the Tennessee Department of Education.

This manual was reviewed by the U.S. Department of Education, Office for Civil Rights, Atlanta, Georgia for content. The Office for Civil Rights does not make it a practice of endorsing such manuals. However, the compliers of this manual would like to thank them for their technical assistance in this project.

Please be advised that this manual is only to advise and assist and is not produced as a mandated set of policies of the Tennessee Department of Education. However, Section 504 and Title II are not optional, and adherence to the Acts is mandated by the U.S. Department of Education for receipt of federal funds.

We hope this manual will assist the children with disabilities to have a better educational experience in Tennessee schools.

Introduction

Section 504 of the Rehabilitation Act of 1973 is a civil rights statute which provides: “No otherwise qualified individual with handicaps in the United States...shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” *29 USC § 794*.

The purpose of this document is to guide local education agencies so that they may be aware of their obligations under Section 504 of the Rehabilitation Act of 1973. Local education agencies may contact the Department’s Assistant General Counsel for Civil Rights at (615) 253-1550 for technical assistance.

This document serves only to guide local education agencies and is not a policy of the Tennessee Department of Education. However, Section 504 is not optional, and adherence to the Act is mandated by the U.S. Department of Education for receipt of federal funds.

All or any part of this document may be copied for educational purposes without permission from the Tennessee Department of Education.

Frequently Used Terms

Educational Placement A program and/or service setting with children who are not disabled, to the maximum extent appropriate to the needs of the child.

Eligibility A student is eligible under §504 if the student: (a) has a physical or mental impairment which substantially limits one or more major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment.

Equal access Equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services.

Free Appropriate Public Education (FAPE) Refers to the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards. A LEA shall provide FAPE to each qualified disabled person who is in its jurisdiction. FAPE must be provided without cost, except for fees that are also paid by nondisabled students.

Hidden Disabilities Physical or mental impairments that are not readily apparent to others. They include such conditions and diseases as specific learning disabilities, diabetes, epilepsy, allergy, or chronic illnesses. A chronic illness involves a recurring and long-term disability such as heart disease, kidney or liver disease, high blood pressure, or ulcers.

Major Bodily Functions Pursuant to the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), such functions include immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This list is not exhaustive.

Major Life Activity Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. In the ADAAA, additional examples include eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. See also Major Bodily Functions.

Manifestation Determination Meeting of the 504 review committee to determine whether the student's behavior is caused by, or has a direct and substantial relationship to, his/her disability when a student is removed from classes to such an extent that it constitutes a significant change of placement.

Parent A biological or adoptive parent or guardian, surrogate parent, someone acting in place of a parent (including a grandparent, stepparent, or other relative) with whom the child lives, or someone who is legally responsible for the child.

Physical or Mental Impairment (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (b) any

mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities. A physical or mental impairment does not constitute a disability unless its severity is such that it results in a substantial limitation of one or more major life activities.

Procedural Safeguards A system of activities established and implemented by the LEA that provides the parent or guardian with notice, an opportunity to examine relevant records, an impartial hearing with parental participation and representation by counsel, and a review procedure when there is a disagreement between the parents and the LEA regarding the identification, evaluation or educational placement of a student eligible under §504.

Related services Refers to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.

Section 504 Coordinator A responsible employee of a recipient of federal funds that employs fifteen (15) or more persons who shall coordinate the efforts to comply with the section 504 regulations.

Section 504 Review Committee A group of persons knowledgeable about the student, knowledgeable about the meaning of the evaluation data, the placement options, the legal requirements to place a disabled child in the least restrictive environment, and the legal obligation to provide comparable facilities to disabled students. The committee shall include the 504 coordinator or designee, parents, and professionals knowledgeable about the student.

Significant Change in Placement A substantial and fundamental change in a student's educational program. Whether a change in facilities is a significant change in placement must be determined on a case by case basis. For example, if a student is receiving the same services and programming in substantially the same environment, there has not been a significant change in placement. However, OCR considers regular education transfers made due to age considerations, including graduation, to be a significant change in placement.

Student Services/Section 504 Plan A written document developed by a student's 504 review committee which states the nature of the concern, the specific modifications, and the related support services to be provided to a child who is eligible under Section 504.

Substantially Limits Means: (1) the inability to perform a major life activity that the average person in the general population can perform; or (2) Substantial limitation as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration which the average person in the general population can perform that same major life activity. This definition is not comprehensive and reflects the fact that a definition is not included in the regulations. The Office of Civil Rights (OCR) has declined to formally interpret the term in non-regulatory guidance. OCR has stated that the term has been interpreted to require an important and material limitation. Decisions should be made by the 504 review committee on a case by case basis.

Overview

What is Section 504?

Section 504 is a federal civil rights law that is designed to eliminate disability discrimination in programs and activities that receive federal funds. Since all public school districts receive federal funds, all public school districts must comply with Section 504. Under Section 504, denying a disabled student a free appropriate public education constitutes disability discrimination.

What is a "program or activity"?

The term includes all levels of the Tennessee Department of Education and all LEAs or schools receiving federal funds regardless of whether the specific program or activity involved is a direct recipient of federal funds. For example, if a district contracts with alternative education programs, the district must insure that a student with disabilities has an equal opportunity to participate in alternative education, even though the programs themselves do not receive any federal funds. *34 CFR 104.3(k)*.

Who is a "qualified" individual with a disability?

For elementary and secondary education programs, Section 504 regulations define a qualified individual with a disability as one who is: a) of an age during which non-disabled individuals are provided with educational services; b) of any age during which it is mandatory under State law to provide such services to disabled individuals; or c) entitled to FAPE under IDEA. *34 CFR §104.3(l)*.

Who is eligible under Section 504?

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment.

Section 504 requires that school districts provide FAPE to qualified students in their jurisdictions who may have a physical or mental impairment that substantially limits one or more major life activities.

The meaning of "disabled student" under Section 504 was substantially broadened by the American's with Disabilities Amendments Act of 2008, which became effective on January 1, 2009. Congress amended the ADA in 2008 to create "clear, strong, consistent, enforceable standards" to broaden who qualifies as a "disabled person" under Section 504 and the ADA. Therefore, the term "physical or mental impairment" is not limited to any specific diseases or categories of medical conditions. Additionally, the impairment need not prevent, or significantly or severely restrict a student in performing a major life activity to be considered "substantially limiting."

Just about any activity that is of importance to a school-aged student's daily life now qualifies as a "major life activity," and an impairment that substantially limits one major life activity need not limit other major life activities to be considered a disability. Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self,

performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act, Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

When determining eligibility, a student should be compared to his/her non-disabled age/grade-level peers.

Mitigating Measures

Mitigating measures used by a disabled student to manage his/her impairment or lessen the impact of his/her impairment (e.g. medication, medical devices, related aids and services, etc.) should be disregarded when determining whether a student’s impairment constitutes a disability under Section 504. There is one (1) exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if the impairment substantially limits a major life activity. “Ordinary eyeglasses or contact lenses” are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas “low-vision devices” are devices that magnify, enhance, or otherwise augment a visual image.

Temporary Impairments

A temporary impairment is a disability under Section 504 and the ADA if it is severe enough that it substantially limits a major life activity for a student. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both, the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

Episodic Impairments

An impairment that is episodic or in remission (e.g. epilepsy, cancer, bipolar disorder, etc.) is a disability under Section 504 and the ADA, if it substantially limits a major life activity for a student when active. Such a student is entitled to a free appropriate public education under Section 504.

Transitory Impairments

An impairment with an actual or expected duration of 6 months or less. Under the Amendments Act, Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory or minor.

What is a Free Appropriate Public Education Under Section 504?

For purposes of Section 504, a free appropriate public education (FAPE) refers to the provision of regular or special education and related aids and services that are designed to meet individual education needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards.

The definition of related aids and services under Section 504 is broad and includes any service that a student needs to participate in and benefit from a district's educational program. Related services refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation.

Compliance Requirements

To be in compliance with Section 504, LEAs must do the following:

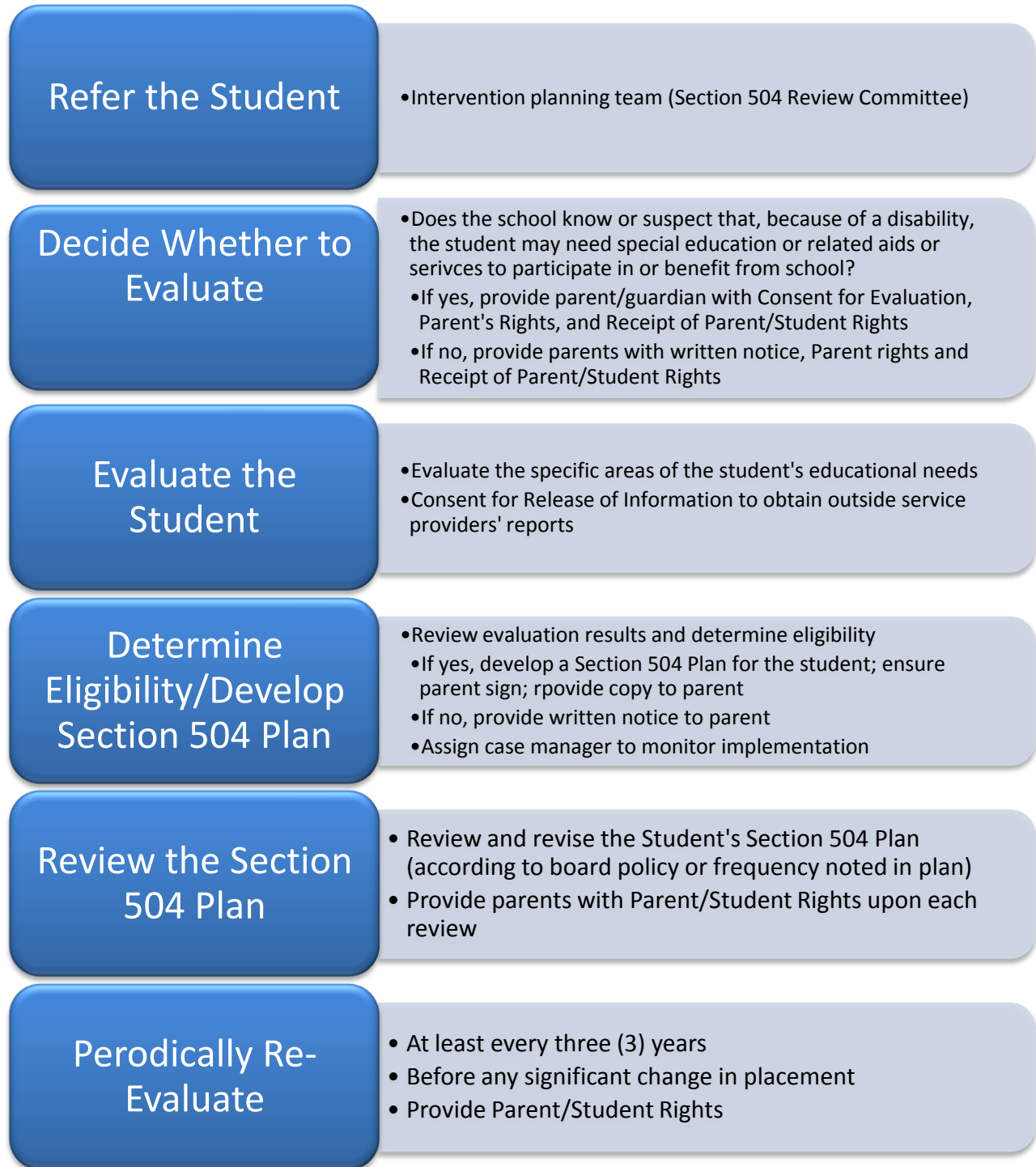
1. Provide written assurance of non-discrimination whenever the LEA receives federal funds. *34 CFR 104.5(a).*
2. Designate an employee to coordinate its efforts to comply with Section 504. (Applies to recipients of federal funds with 15 or more employees.) *34 CFR 104.7(a).*
3. Adopt grievance procedures to resolve complaints alleging any action prohibited by federal regulations. (Applies to recipients of federal funds with 15 or more employees). This does not apply to applicants for employment. *34 CFR 104.7(b).*

Note: Students, parents or employees are entitled to file grievances. A grievance procedure like that afforded to parents under the Family Education Rights and Privacy Act (FERPA) for resolving disputes about student records would suffice.

4. Provide notice to students, parents, employees, unions, and professional organizations of nondiscrimination in admission or access to, or treatment or employment in, its programs or activities (if 15 or more employees). Notice must also specify the responsible employee. Notice must be included in student/parent handbook. *34 CFR 104.8.*
5. Annually identify and locate all Section 504 qualified children in the LEA's geographic area who are not receiving a public education. *34 CFR 104.32(a).*
6. Annually notify persons who are disabled and their parents of the district's responsibilities under Section 504. *34 CFR 104.32(b).*
7. Provide parents with procedural safeguards including the right to a due process hearing. Each LEA must develop a process to ensure impartial due process hearings. The employment of a 504 hearing officer is the financial responsibility of the LEA. *34 CFR 104.36.*

Local Education Agency Responsibilities

Section 504 Process Flow Chart



The Section 504 Process

1. Student Referrals

Parents, teachers, diagnosticians, and building administrators may refer for an evaluation a student who needs or is believed to need special education and/or related services because of a disability. The person may obtain a written referral form from the 504 designee, who will assist both the parent and the staff in collecting appropriate student data, as well as, providing parents with appropriate notification. The 504 coordinator/designee will present these written requests to the Section 504 review committee for determination of educational need.

2. Free Appropriate Public Education (FAPE)

Districts must provide FAPE (regular or special education and related aids and services) to a qualified student with a disability in the LEA's jurisdiction. Instruction must be individually designed to meet the needs of the student as adequately as the needs of non-disabled students. Section 504 does not require LEAs to develop an IEP. It is recommended that the LEA document that the Section 504 review committee convened and specify the agreed upon services in a document called a Student Services/Section 504 Plan. The quality of educational services provided to students with disabilities under Section 504 must be equivalent to the services provided to non-disabled students. Teachers must be trained in the instruction of persons with the disability in question and appropriate materials and equipment must be available. *34 CFR 104.33(b).*

Transportation If a LEA places a student in a program not operated by the LEA, the LEA must insure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the parent if the student were placed in the program operated by the LEA. *34 CFR 104.33(c)(2).* If a LEA provides transportation to all its students within a certain geographic area, it may not discriminate in its provision of transportation to students with a disability. The length of the bus rides for students with disabilities should not be longer than that of non-disabled students. If a LEA proposes to terminate a qualified student's bus transportation for inappropriate bus behavior, the LEA must hold a manifestation determination and provide the parents with notice of their rights.

Residential Placement The placement must be provided by the LEA at no cost to the parent if necessary to provide FAPE. This includes non-medical care and room and board. *34 CFR 104.33(c)(3).*

Parental Placements If the LEA offers FAPE to a student but the parent chooses to place the child elsewhere, the LEA is not responsible to pay for the placement. *34 CFR 104.33(c)(4).* Disagreements regarding program availability and financial responsibility are subject to due process procedures.

3. Evaluations

An evaluation is usually triggered by a request from a parent or a referral from the classroom teacher. A LEA is required to evaluate the student only when it has reason to believe the child needs special education and related services. However, it is best practice to evaluate the student unless there is no reason to suspect the student might be eligible under Section 504. If a student needs or is believed to need special education or related services, the LEA must evaluate the student prior to

initial placement in a regular or special education program and before any significant change in placement. *34 CFR 104.35(a)*. A full evaluation is not required when neither the LEA nor the parents believe that the child is in need of special education or related services. However, the LEA should have current medical, educational, and/or behavioral information in order to make needed modifications to the student's educational program.

The LEA must establish policies and procedures for evaluation and placement which assure that tests and other evaluation materials: have been validated for the specific purpose for which they are used and are administered by trained personnel; are tailored to assess educational need and are not merely based on IQ scores; and reflect aptitude, achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual or speaking skills (unless the test is designed to measure these particular deficits). *34 CFR 104.35(b)*. There is no entitlement to an independent evaluation under Section 504.

Before a student can receive services, the parents must be notified and the student must be evaluated using validated tests and trained personnel. Both parental consent and prior notice are required before a student is initially evaluated and/or placed. LEAs are not required to obtain parental consent for subsequent student evaluations. If a parent refuses consent for an initial evaluation and the LEA suspects a student has a disability, Section 504 provides that LEAs may use due process hearing procedures to seek to override the parents' denial of consent.

The evaluation/screening and placement process is determined by the type of suspected disability and the type of services the student may need. The evaluation must be sufficient to accurately and completely assess the nature and extent of the disability in order to recommend appropriate services. *34 CFR 104.35(b)*. Utilization of the state regulations and evaluation standards for IDEA is an acceptable means of meeting the evaluation requirements of Section 504. Parents are entitled to a copy of the 504 eligibility report and if eligible, Student Service/Section 504 Plan. If parents do not attend the meeting, a copy should be sent to them.

4. Placement

In interpreting evaluation data and making placement decisions, the 504 review committee must:

- Draw upon information from a variety of sources;
- Ensure that all information is documented and considered;
- Ensure that the placement decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement options; and
- Ensure that the student is educated with non-disabled peers to the maximum extent appropriate. To the maximum extent appropriate, the LEA must educate students who are disabled with non-disabled students in the least restrictive environment. In order to remove a child from the regular educational environment, the LEA must demonstrate that education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. *34 CFR § 104.34; 34 CFR 104.35(c)*.

5. 504 Review Committee

The 504 review committee has the responsibility of determining eligibility and appropriate modifications, related aids or services for the student, and will be composed of the 504

coordinator/chairperson, principal, parents and professionals knowledgeable about the student. Other persons may be invited to attend the committee meeting by the parents and/or the LEA. The group should review the nature of the disability, how it affects the student's education, whether special services are needed, and if so what those services are. The decisions about Section 504 eligibility and services must be documented in the student's file and reviewed periodically. The 504 review committee meeting may proceed when the parents are not present, but every effort should be made and documented by the 504 coordinator/chairperson to have parents attend the meeting, such as calling them or rescheduling the meeting. The function of the 504 review committee is to consider the student's eligibility, initial placement program and services needed, conduct program reviews, and periodically review the student's 504 program.

6. Student Service/Section 504 Plan

The Student Service/Section 504 Plan developed by the 504 review committee is based upon the individual child's educational need(s) and least restrictive environment considerations. The student service/Section 504 plan will document the 504 committee's decisions and will include the date, student information, accommodations and services, and signatures and recommendations of members present at the meeting. A copy of the student service/Section 504 plan will be made available to appropriate school personnel when it contains accommodations and supportive service provisions to be implemented at school. The student service/Section 504 plan will be filed and maintained in each student's education records.

7. Reevaluations

Section 504 requires periodic reevaluations. There is no specified time limit. However, LEAs will be in compliance if they reevaluate the student every three years, pursuant to IDEA. Additionally, Section 504 requires a reevaluation before any significant change in placement. *34 CFR 104.35(d)*. Reevaluation can consist of a comprehensive evaluation or a review of the student data and student service/Section 504 plan. Examples of significant changes in placement which require reevaluation include: expulsion; series of suspensions which exceed 10 days (consideration must be given to the frequency of suspensions, the length of each and their proximity to one another); transferring a student to home instruction; graduation from high school; and, significantly changing the composition of the student's class (e.g., moving the student from regular education to the resource room).

Frequently Asked Questions

Generally

How is discrimination defined in Section 504?

Discrimination under Section 504 occurs when a recipient of federal funds:

1. Denies, on the basis of a disability, a qualified person the opportunity to participate in or benefit from an aid, benefit or service (e.g., LEA refusing to allow any student with an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disabling condition; expelling a student for behavior related to his/her disability; refusing to dispense medication to a student who could not attend school otherwise.)
2. Denies the Section 504 qualified person an opportunity to participate in or benefit from the aid, benefit, or service that is *equal* to that afforded others.
3. Fails to provide aids, benefits, or services to a person qualified under Section 504 that are as effective as those provided to non-disabled persons (e.g., providing him/her with an interpreter instead of placing a student with a hearing impairment in the front row).
Note: "Equally effective" means equivalent as opposed to identical. Moreover, to be equally effective, an aid, benefit or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.
4. Provides different or separate aids, benefits or services to disabled persons or any class of disabled persons unless such action is necessary to provide aid, benefits or services that are as effective those provided to others.
5. Aids or perpetuates discrimination against the disabled by providing significant assistance to an agency, organization or person that discriminates on the basis of a disability in providing any aid, benefit, or service to beneficiaries of the program (e.g., sponsoring a student organization that excludes persons with disabilities).
6. Denies a person with a disability the opportunity to participate as a member of a planning or advisory board strictly because of their disability.
7. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others.
8. In determining the site or location of a facility, makes selections which effectively excludes persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination.

What is the difference between Section 504 and IDEA eligibility?

The Individuals with Disabilities Education Act (IDEA) specifically lists the disabling conditions which entitle a child to receive special education and related services. Additionally, in order to receive services under IDEA, the disabling condition must result in a need for special education and related services. Section 504 is much broader. There is no list of disabling conditions. The regulations also make clear that certain conditions, such as drug or alcohol addiction, and heart disease, which would not qualify a child under IDEA, may be disabling conditions under Section 504.

May a LEA use IDEA funds to serve child eligible under Section 504 but not IDEA?

No. However, the LEA may use IDEA funds to evaluate the child if the LEA thinks the child may be eligible for special education and related services as defined by IDEA.

Does Section 504 have a Child Find requirement?

Yes. Section 504 requires the LEA to conduct an annual effort to identify and locate every qualified student residing in the LEA's jurisdiction and take any necessary steps to notify those students and their parents of the LEA's duty under §504. If the LEA chooses, it may undertake screenings to meet this requirement.

Who enforces Section 504?

The Office for Civil Rights (OCR) enforces four federal statutes that prohibit discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education. Discrimination on the basis of race, color, and national origin is prohibited by Title VI of the Civil Rights Act of 1964; sex discrimination is prohibited by Title IX of the Education Amendments of 1972; discrimination on the basis of disability is prohibited by Section 504 of the Rehabilitation Act of 1973; Title II of the American with Disabilities Act of 1990; and age discrimination is prohibited by the Age Discrimination Act of 1975. OCR also assists other departmental offices in ensuring that federal assistance administered by those offices is consistent with federal civil rights laws.

OCR has authority to enforce these laws in all programs and activities that receive federal funds. These include programs and activities operated by institutions and agencies, such as state education agencies, elementary and secondary schools, colleges and universities, vocational schools, vocational rehabilitation agencies, libraries, museums and some prisons that receive federal funds or other recipients.

OCR investigates complaints filed by individuals, or their representatives, who think that they have been discriminated against because of race, color, national origin, sex, disability, or age. It also initiates compliance reviews of recipient institutions and agencies, and monitors the progress in eliminating discriminatory practices of institutions and agencies that are implementing plans negotiated by OCR. OCR attempts to resolve compliance problems through negotiation. However, if unable to do so, OCR initiates the actions necessary to enforce the law.

Parents who allege that the LEA has violated a provision of Section 504 may file a complaint with the OCR. The address of the regional office which covers Tennessee is:

United States Department of Education
Office for Civil Rights
Atlanta Office, Southern Division
61 Forsyth St., S.W.
Suite 19T70
Atlanta, GA 30303
(404) 974-9406

Does Section 504 address participation in non-academic services and extracurricular activities?

Yes. LEAs must provide equal opportunity in areas such as counseling, physical education, recreation, athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to other agencies and employment. *34 CFR § 104.37*. Section 504 regulations give students with disabilities an equal opportunity to participate in extracurricular services and extend the least restrictive environment mandate to extracurricular activities.

- **Counseling Services** LEAs must provide counseling services without discrimination on the basis of disability. LEAs may not counsel students with a disability toward more restrictive career objectives. *34 CFR § 104.37(b)*.
- **Physical Education and Athletics** LEAs must provide an equal opportunity for students with disabilities to participate. LEAs may offer these activities separately for students who are disabled only if necessary, and the district may not deny a disabled student the opportunity to compete in activities which are not separate. *34 CFR § 104.37(c)*.

What are parent's rights for inspecting and reviewing educational records under Section 504?

Parents or eligible students must be given the right to inspect and review education records collected, maintained or used for purposes of referring, evaluating, placing or educating the student receiving Section 504 accommodations. The 504 coordinator/chairperson must comply with a parent's request to access records within a reasonable period of time, but no less than forty-five (45) calendar days after receiving the request. Records must be made available for inspection and review at other mutually agreeable time. Reasonable requests for explanations and interpretations of the records must be granted. If circumstances effectively prevent the person or eligible student from exercising the right to inspect and review the record, the 504 coordinator/chairperson must provide the parent or student with a copy of the records requested. *FERPA 29 USC 1232(g)(a)(1)(A) and (B); 34 C.F.R. 99.10*.

Are there any special considerations for children who have AIDS or HIV Infection?

Students with Acquired Immune Deficiency Syndrome (AIDS), AIDS - related complex (ARC) or otherwise infected with Human Immunodeficiency Virus (HIV infected) are individuals with disabilities under Section 504. They either qualify as actually having a physical impairment, which substantially limits a major life activity, or are regarded as having such a disability. Placement decisions must be made by the 504 review committee.

Assessment of Academic Skills

Must students with a Section 504 plan complete all curriculum requirements?

It depends. While students must complete curriculum requirements established by the State Board of Education in order to graduate from high school, some exceptions may be made on a case-by-case basis based on the individual needs of the student.

What are appropriate accommodations for students with a Section 504 plan participating in statewide assessments?

Test administration procedures that do not cause test results to be invalid may be used. The decision to use a particular modification with a student should be made on an individual basis and should take into consideration the needs of the student and whether the student routinely receives the modification in classroom instruction. Accommodations should not be introduced for the first time during a statewide assessment. The student's 504 review committee shall make the decision regarding testing modifications and document them in the Student Services/Section 504 Plan.

Discipline

Can a student eligible for Section 504 accommodations receive disciplinary action?

Yes. A student in a 504 program is subject to the school's student code of conduct. The student's Section 504 plan may include a behavior management plan, which outlines disciplinary options to be used. In some cases, inappropriate behavior may cause the student to be removed from classes and/or school for a few days or to be sent to an alternative education program, such as a supervised setting separate from regular classes or in-school suspension. In either case, the student will be given the opportunity to complete assignments and earn course credit.

When it is determined that the disabled student's misconduct is caused by his/her disabling condition, the student may not be suspended or expelled from school. The 504 review committee will then determine whether the student's current educational placement or accommodation plan is appropriate. OCR interprets Section 504 as requiring LEAs to develop an individualized behavior management plan for a student with a disability when the student's behavior significantly interferes with his ability to benefit from his education. The purpose of the plan is to maintain the student's placement in the least restrictive environment to meet his educational needs. Removal for more than 10 days requires the same guidelines as for special education students. The student is entitled to the due process protections of 34 CFR §104.36.

Does Section 504 require that a district conduct a manifestation determination before suspending or expelling a student with a disability?

The 504 review committee will conduct a manifestation determination when a student with a disability is suspended from school for more than ten (10) consecutive school days or when a series of suspensions create a pattern of exclusions that constitute a significant change in placement. The determination will be based on current information. The evaluation data considered in a manifestation determination meeting must be recent enough to afford an understanding of the student's current behavior. The determination of whether a series of suspensions is a significant change of placement will be made on a case-by-case basis by the 504 review committee. The factors

that will be considered will be the length of each suspension, the proximity of the suspension to one another, and the total amount of time the disabled student is suspended from school.

If a student violates the LEA's code of conduct, s/he may also be expelled from school. Before an expulsion or other exclusion that constitutes a significant change in placement, the 504 review committee must conduct a manifestation determination. Such a determination should be based on current information. If it is determined by the 504 review committee that the misconduct is caused by the student's disabling condition, the student may not be expelled.

The 504 review committee must then determine whether the student's current educational placement is appropriate. If it is determined by the 504 review committee that the misconduct is not caused by the student's disabling condition, the student may be disciplined in the same manner as a non-disabled student, including expulsion from school.

If the LEA suspects that a student has an alcohol or drug problem, what should it do?

If a LEA suspects that the drug or alcohol problem may be substantially limiting a major life activity, such as learning, the LEA is obligated to evaluate the child at the LEA's expense. If the evaluation verifies the existence of a disabling condition, which substantially limits a major life activity, the student is considered disabled under Section 504. The LEA must then convene a 504 review committee meeting. The committee will design an educational program to meet the student's individual needs and give notice to the student's parents of their rights under Section 504. The LEA must periodically reevaluate the student and may not make a significant change in the student's placement without providing the parent with notice and conducting a reevaluation.

NOTE: Section 504 does not require LEAs to provide treatment for substance abuse.

What if the student is caught using drugs at school?

A LEA is entitled to enforce its rules prohibiting the use, sale or possession of drugs or alcohol by drug- or alcohol-addicted students, provided that the rules are enforced evenly with respect to all students. Although using drugs at school is related to drug addicted student's disability, the LEA may still use its normal disciplinary policies, including expulsion, provided that the LEA follows proper procedures. This is a notable exception to the general prohibition against expelling a student for behavior related his/her disability under Section 504 and the IDEA.

Grievances and Due Process

What are the standards governing grievance procedures under Section 504?

The LEA must adopt a grievance procedure for a student, parent or employee to file a grievance concerning alleged violation of Section 504. OCR has opined that a compliant grievance procedure will include reasonable time frames, an opportunity to present evidence, notification of findings and an appeals process.

What are parent's due process rights under Section 504?

Parents who wish to challenge a decision of the Section 504 committee shall file a written Notice of Appeal with the Section 504 coordinator. Upon receipt of a Parent's Appeal, the LEA will schedule a

due process hearing before an impartial hearing officer and provide the parents with a written Notice of Hearing that sets out the date, time, and place for the hearing and advises them of their right to participate and be represented by an attorney. The employment of a hearing officer is the financial responsibility of the LEA.

Requirements of the Hearing Officer:

- a. The hearing officer will render a written decision at the conclusion of the hearing. Written findings of fact and conclusions of law shall be required.
- b. The hearing officer must not be an employee of the LEA and may not be related to any member of the board of education.
- c. The hearing officer need not be an attorney-at-law, but shall be familiar with the requirements of Section 504.
- d. The hearing officer will be paid by the LEA as an independent contractor for services rendered to the hearing. The hearing will be conducted without cost to the parents/guardians.

Hearing Rights:

Rights to which both the parents/guardians and the LEA are entitled, include the right:

- a. To file a written notice of appeal with the Section 504 coordinator;
- b. To schedule a hearing;
- c. To receive written notice of the hearing that sets out the date, time, place, and reason for the hearing;
- d. To an impartial hearing officer, who is not an employee of the LEA or related to any member of the board of education;
- e. To be accompanied and advised by an attorney and by persons with special knowledge of the problems of children with disabilities;
- f. To obtain a copy of the written record or tape recording of the hearing;
- g. To receive a written copy of the decision of the hearing officer; and
- h. To provide an interpreter for parents/guardians whose primary language is other than English or are hearing impaired.

Post-Hearing Rights:

- a. The parents/guardians will receive a written record or tape recording of all that was said at the hearing.
- b. A copy of the hearing officer's decision will be given to both the LEA and the parents/guardians.
- c. The decision made by the hearing officer is final, unless the parents/guardians or the LEA appeals the decision to the appropriate state or federal court.

Accessibility**What is the LEA's responsibility to make buildings accessible?**

Facilities which are defined by Section 504 as "existing facilities" need not necessarily be made accessible so long as the program or activity, viewed in its entirety, is readily accessible to persons with disabilities. *34 CFR § 104.22*. It would not be necessary to make every school in a LEA accessible. However, the student must be afforded an equal opportunity to enjoy the full range of services offered by the LEA.

What modifications can the LEA make to facilities?

A LEA can redesign equipment, reassign classes or other services to accessible buildings, assign aides to students, deliver services at alternate accessible sites, or alter existing facilities. A LEA need not undertake structural changes to a building if other methods will result in compliance. *34 CFR § 104.22(b)*.

What are some examples of unacceptable accommodations?

Carrying a student up stairs; in a LEA, making one particular building or part of a building accessible and placing all students with mobility impairments at this location; having students who are disabled eat on a separate floor due to an inaccessible cafeteria; denying certain programs such as music, art or assembly because these programs are inaccessible.

What are the LEA's obligations for new buildings, additions, or alterations?

If the start date for construction is on or after March 15, 2012, all newly constructed or altered State and local government facilities must comply with the 2010 Standards. Before that date, the 1991 Standards (without the elevator exemption), the UFAS, or the 2010 Standards may be used for such projects when the start of construction commences on or after September 15, 2010. If the construction or alteration occurred before September 15, 2010, the facilities must comply with the UFAS or 1991 Standards.

For more information on the 2010 ADA Standards for Accessible Design, please visit:
http://www.ada.gov/2010ADASTandards_index.htm.

What does “to the maximum extent feasible” mean?

This provision covers the occasional instance where the nature of an existing facility is such that it is impractical or prohibitively expensive to renovate it in a manner that results in its being entirely barrier-free. However, in all of these instances, the alteration should provide the maximum amount of physical accessibility that is feasible. *34 CFR § 104.23(b)*.

Who provides technical assistance for accessibility issues?

OCR can provide technical assistance to LEAs on fulfilling the accessibility requirements of Section 504.

Employment Practices

The primary purpose of this manual is to address issues regarding student rights under Section 504. However, since Section 504 also encompasses employment practices, this manual includes this section on employment practices. For further information on requirements of LEAs and their employees, please consult the Personnel Office of the LEA, and/or Chapter 34 of the Code of Federal Regulations, Part 104, Subpart B.

Who is a “qualified” individual with a disability for employment purposes?

A qualified individual with disabilities is one, who with reasonable accommodations can perform the essential functions of the job in question. *34 CFR § 104.3(1)(1)*.

What are the LEA’s responsibilities for hiring persons with disabilities?

LEAs, because they receive federal financial assistance under the IDEA and other federal statutes, are required to take positive steps to employ and advance qualified individuals with disabilities. LEAs must make reasonable accommodations to the known physical or mental limitation of an otherwise qualified applicant or employee who has a disability unless the accommodation would impose an undue hardship on the operation of the LEA’s program. *34 CFR § 104.12(a)*.

What is considered an undue hardship?

The regulations list the following factors which should be considered:

1. The overall size of the LEA’s program with respect to the number of employees, number and type of facilities, and size of budget.
2. The type of operation, including the composition and structure of its workforce.
3. The nature and cost of the accommodation needed. *34 CFR § 104.12(c)*.

What are reasonable accommodations?

Some examples of reasonable accommodations are:

1. Making facilities readily accessible to and usable by persons with disabilities.

2. Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters. *34 CFR § 104.12(b)*.

When may a LEA refuse to hire an applicant or promote an employee who has a disability?

The LEA does not need to hire an applicant when the person is not qualified, where reasonable accommodation does not overcome the effects of the person's disability, or where reasonable accommodation causes undue hardship to the employer. *34 CFR § 104.12*.

Is the LEA prohibited from asking an applicant about any disabilities s/he may have?

Generally, an employer covered by Section 504 may not conduct a pre-employment medical examination or make pre-employment inquiries as to whether an applicant has a disability. However, the employer may inquire into an applicant's ability to perform job-related functions. For example, an employer may not ask an applicant if s/he has epilepsy but may ask whether s/he can perform a particular job without endangering other employees. *34 CFR § 104.14*.

Are medical examinations prohibited?

An employer may condition employment on the results of a medical examination only if all applicants, regardless of disability, are also subject to such an examination and the results are kept confidential. *34 CFR § 104.14*.

What limitations are on an employer regarding testing applicants?

A test which tends to screen out persons with disabilities may not be used unless the test score is shown to be job related and alternative job related tests which do not screen out persons with disabilities are not available. Tests must also be administered in a manner that reflects actual aptitude or skill rather than the sensory, manual or speaking impairment of the applicant unless the tests purport to test these skills. *34 CFR § 104.13*.

Is an employer allowed to provide different fringe benefits or contributions for persons with disabilities if justified on an actuarial basis?

No. Such a suggestion was rejected by the U.S. Department of Education when the regulations were adopted. *34 CFR § 104.11*.

What is an employer's obligation to hire or retain a person who is addicted to alcohol or drugs?

An employer subject to Section 504 may not refuse employment to someone who has been addicted to drugs or alcohol in the past. If an applicant or employee is presently addicted to alcohol, the employer may not refuse or terminate employment unless the employer can show that the alcohol addiction prevents successful performance on the job or presents a direct threat to property or the safety of others. The employer may hold the addicted person to the same standards of performance and behavior as expected of others. The behavioral manifestations of the condition may be taken into account in determining whether s/he is qualified. An employer is not required to retain or hire an individual addicted to drugs who is currently using drugs.

Is an employer entitled to administer drug testing to persons known to have been addicted in the past?

An employer is not prohibited from requiring an employee to be drug tested who has successfully completed or is presently participating in a supervised drug rehabilitation program.

Major Differences in IDEA & Section 504

	IDEA	Section 504
General Purpose	A federal funded statute which provides financial aid to states in their efforts to ensure adequate and appropriate services for disabled children.	A broad civil rights law which protects the rights of individuals with disabilities in programs and activities which receive federal financial assistance from the U.S. Dept. of Education.
Eligibility	Lists categories of disabilities.	A person who has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as disabled by others.
FAPE	“Appropriate” means a program designed to provide an educational benefit.	“Appropriate” means an education comparable to the education provided to nondisabled students.
Special Education vs. General Curriculum	A student is only eligible to receive IDEA services if the IEP team determines that the student has one of the disabling conditions and needs special education and related services.	A student is eligible if s/he has or has had a physical or mental impairment, which substantially limits a major life activity or is regarded as disabled by others. The student is not required to need special education.
Funding	The LEA receives additional funds for eligible children.	Additional funds are not provided.
Accessibility	Not specifically mentioned, although if modifications must be made to provide FAPE, IDEA requires it. Does not extend least restrictive environment to nonacademic services.	Detailed regulations regarding building and program accessibility and comparable facilities. Includes academic settings.
Procedural Safeguards	Requires written notice regarding identification, evaluation, and placement. Notice requirements are specifically spelled out. Prior written notice required before any change in placement.	Written notice not required although it is recommended. Notice required before a significant change in placement.
Evaluations	Consent required prior to an initial evaluation. Reevaluations must be conducted at least every 3 years. Not required before a change in placement.	Notice, consent required prior to initial evaluation. Periodic reevaluations required. Reevaluation required before a significant change in placement.
Grievance Procedures	Not required.	LEAs with 15 or more employees must designate an employee to ensure compliance with Section 504 and provide a grievance procedure for parents, students, and employees.

Due Process Hearings	Requires impartial hearing. Rules are almost identical.	Requires impartial hearing. Rules are almost identical.
Exhaustion	Must pursue administrative hearing before seeking redress in court.	Not required.
Enforcement	Compliance monitored by TDOE. TDOE will resolve complaints.	Enforced by OCR. OCR will investigate complaints.
Employment	No provisions.	Regulates employment of persons with disabilities.
Transition Services	IDEA requires the development of a transition plan within the IEP process beginning at age 14.	No requirement.
Independent Educational Evaluation	Required.	Not required.

Appendix

Section 504 Coordinator Duties and Responsibilities

- ❖ Facilitate the implementation of the district Section 504/ADA policy.
- ❖ Develop, revise, and ensure compliance in the implementation of consistent Section 504 procedures.
- ❖ Advise the district director of schools and school board regarding Section 504 compliance issues/ and needs.
- ❖ Provides on-going training and support to district staff regarding Section 504 and the implementation of the Section 504 procedures.
- ❖ Facilitate the provision of reasonable accommodations for district employees with disabilities.
- ❖ Services as a resource to district administrators, building-level teams and community members regarding Section 504/ADA issues.
- ❖ Coordinates Section 504/ADA grievance procedures.
- ❖ Serves as the district's liaison to the Office for Civil Rights. (OCR complaint resolution and corrective action plan implementation).

Sample Notice of Non-discrimination

The following sample notice of non-discrimination meets the minimum requirements of the regulations enforced by OCR:

The (Name of LEA) does not discriminate on the basis of race, color, national origin, sex, disability, or age in its programs and activities. The following person(s) has been designated to handle inquiries regarding the non-discrimination policies:

Name and/or Title

Address

Telephone No.

Inquiries may also be made to the Office for Civil Rights. The address of the regional office, which covers Tennessee, is:

United States Department of Education
Office for Civil Rights
Atlanta Office, Southern Division
61 Forsyth St., S.W.
Suite 19T70
Atlanta, GA 30303
(404) 974-9406

Sample Annual Notice to Parents

In compliance with state and federal law, the (School System) will provide to each protected student with a disability without discrimination or cost to the student or family, those related aids, services or accommodations which are needed to provide equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities to the maximum extent appropriate to the student's abilities. In order to qualify as a protected student with a disability, the child must be of school age with a physical or mental disability, which substantially limits or prohibits participation in or access to an aspect of the school program. These services and protections for "protected students who are disabled" are distinct from those applicable to all eligible or exceptional students enrolled (or seeking enrollment) in special education programs.

For further information on the evaluation procedures and provision of services to protected disabled students, contact:

Name and/or Title

Address

Telephone No.

Sample Notice of Parent and Student Rights

SECTION 504, THE REHABILITATION ACT OF 1973

The Rehabilitation Act of 1973, commonly referred to as Section 504, is a federal nondiscrimination statute. The purpose of the Act is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to nondisabled students.

An eligible student under Section 504 is a student who (a) has, (b) has a record of having, or (c) is regarded as having, a physical or mental impairment which substantially limits a major life activity (such as learning, self-care, walking, seeing, hearing, speaking, breathing, working and performing manual tasks) or a major bodily function (such functions include immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).

The purpose of this Notice is to delineate the rights assured by Section 504. The enabling regulations for Section 504 at *34 CFR Part 104*, entitle students to the following rights:

1. Your child has the right to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of nondisabled students are met. *34 CFR § 104.33*.
2. Your child has the right to free educational services except for those fees that are imposed on nondisabled students or their parents. Insurers and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. *34 CFR § 104.33*.
3. Your child has a right to placement in the least restrictive environment. *34 CFR § 104.34*.
4. Your child has a right to facilities, services, and activities that are comparable to those provided for nondisabled students. *34 CFR § 104.34*.
5. Your child has a right to an evaluation prior to an initial Section 504 placement and any subsequent change in placement. *34 CFR § 104.35*.
6. Testing and other evaluation procedures must conform to the requirements of *34 CFR § 104.35* as to validation, administration, areas of evaluation, etc. The district shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior, physical or medical reports, student grades, progress reports, parent observations, anecdotal reports, and assessment scores. *34 CFR § 104.35*.
7. Placement decisions must be made by a group of persons (i.e., Section 504 Committee), including persons knowledgeable about your child, the meaning of the evaluation data, the

placement options, and the legal requirements for least restrictive environment and comparable facilities. *34 CFR § 104.35.*

8. If eligible under Section 504, your child has a right to periodic reevaluations, generally every three (3) years. *34 CFR § 104.35.*
9. You have the right to notice prior to any action by the district in regard to the identification, evaluation, or placement of your child. *34 CFR § 104.36.*
10. You have the right to examine relevant records. *34 CFR § 104.36.*
11. You have the right to an impartial hearing with respect to the district's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. *34 CFR § 104.36.*
12. If you wish to challenge the actions of the district's Section 504 Committee in regard to your child's identification, evaluation, or educational placement, you should file a written request for a due process hearing with the district's Section 504 Coordinator. *34 CFR § 104.7.*
13. If you disagree with the decision of the impartial hearing officer, you have a right to a review of that decision by a court of competent jurisdiction. *34 CFR § 104.36.*
14. You also have a right to file a complaint with the Office for Civil Rights. The address of the regional office, which covers Tennessee, is:

U.S. Department of Education
Office for Civil Rights - Atlanta
61 Forsythe Street, SW, Suite 19T70
Atlanta, GA 30303
(404-974-9406)

My signature indicates that I have received this Notice of Rights.

Signature

Date

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Section 504 Parental Rights

Pursuant to Section 504 of the Rehabilitation Act of 1973, disabled children and their parents or guardians are entitled to procedural safeguards with respect to actions taken by the (School System) regarding the identification, evaluation, or educational placement of students who are identified under this statute. In this regard the following rights are afforded:

1. Notice of any action taken with regard to identification, evaluation, or educational placement of a disabled student;
2. An opportunity to examine relevant records;
3. An impartial hearing with the opportunity for participation by the disabled student's parents/guardians and representation by counsel; and
4. A review procedure.

If you would like further explanation of these rights, please contact (Name), Section 504 Coordinator, at (Telephone number).

Section 504 Parental Rights were given by (Name and Title) on (date) for (Student's name), (student's date of birth) at (Name of School).

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Section 504 Informational Notice

Section 504 of the Rehabilitation Act of 1973, is a civil rights statute, which prohibits discrimination against persons with a disability in any program or activity receiving federal financial assistance. The statute defines a person with a disability as anyone who:

- *Has a mental or physical impairment which substantially limits one or more major life activities (major life activities include activities such as caring for one's self, performing manual tasks, walking, seeing, hearing speaking, breathing, learning, and working) or major bodily functions (such functions include immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions);*
- *Has a record of such impairment;*
- *Is regarded as having such an impairment.*

In order to fulfill its obligation under Section 504, the (School System) recognizes a responsibility to avoid discrimination in policies and practices regarding its personnel and students. No discrimination against any person with a disability will knowingly be permitted in any of the programs or activities in the (School System).

The (School System) has specific responsibilities under Section 504, which include the responsibility to identify, evaluate, and if the child is determined to be eligible under Section 504, to afford access to appropriate educational services.

If the parent/guardian disagrees with the determination made by the professional staff of the (School System), s/he has a right to a hearing with an impartial hearing officer.

The Family Educational Rights and Privacy Act (FERPA) also specify rights related to educational records. FERPA gives parents/guardians the right to:

- *Inspect and review his/her child's educational records;*
- *Make copies of his/her child's educational records;*
- *Receives a list of all individual(s) having access to his/her child's educational records;*
- *Ask for an explanation of any item in the records;*
- *As for an amendment to any report on the grounds that it is inaccurate, misleading, or violates the child's rights; and*
- *A hearing on the issues if the school refuses to make the amendment.*

If there are any questions, please feel free to contact:

Section 504 Coordinator

Telephone

Sample Section 504 Complaint/Grievance Form

Date _____ School _____

Name _____ Phone _____

Address _____

Person(s) who discriminated against you/child (Please include the individual's title):

Please provide a brief description of what happened, when it happened, and who was involved. (Please attach additional pages, if necessary).

Explain what steps, if any, you have already taken to resolve this matter:

Describe how you would like to see this matter resolved:

Signature

Print

***Please attach any documents or other documents or information you think will help with the investigation of your complaint.**

Sample Section 504 Referral and Recommendations

Referral Date _____

Student _____ DOB _____
Last First M.I.

Parent/Guardian _____ Telephone _____

School _____ Grade _____ Teacher _____

Referral made by _____ Position _____

Reason for Referral _____

Provide information to substantiate concern(s) (i.e., pre-referral data, disciplinary information, screening instruments, observations, anecdotal data, reports, achievement/aptitude test (TCAP), examples of student's work):

Describe interventions already used in attempting to resolve concern(s):

.....

To be completed by the Section 504 Team

Date of Section 504 Team Meeting _____

Recommendations

_____ Refer for Comprehensive Evaluation under IDEA
_____ Screen/evaluate for Section 504 eligibility
_____ Other, Specify _____

Section 504 Team member responsible to inform parent/guardian of recommendations:

Name/Position

Sample Notice of Action/Consent

To: _____ Date: _____
(Parent/guardian)

Student's name: _____ DOB: _____

Student ID No.: _____

I. Notice of Action. The purpose of this written notice is to inform you that we are:

_____ proposing _____ to _____ initiate _____ a/an
_____ refusing _____ change

Mark all items that apply:

_____ evaluation _____ Section 504 plan _____ disciplinary action
_____ eligibility _____ reevaluation _____ other: _____

Description of the proposed or refused action:

Reason why we are proposing or refusing to take action is:

_____ Date: _____
(Name of building Section 504 coordinator)

.....

II. Parent Consent (Only required for initial evaluation.)

_____ Yes, I do consent to an initial evaluation for my child.
_____ No, I do not consent for an initial evaluation for my child.

Signature: _____ Date: _____
(Parent/guardian)

Signature: _____ Date: _____
(Parent/guardian)

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Notice of Section 504 Committee Meeting

Student Name: _____

DOB: _____ Student ID No.: _____ Grade: _____

School: _____ Teacher: _____

The Section 504 Committee will be meeting to discuss referral and evaluation information. If it is determined the student has a disability, the student's educational needs will be discussed and any applicable programs or modifications will be considered.

If you wish to have further information or have any questions please contact:

Section 504 Building Coordinator: _____

Telephone Number: _____

Date Sent: _____

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Release of Information Form

For the purpose of providing the most appropriate instruction and assistance in school, I do hereby give permission for a mutual exchange of psycho-educational evaluations, psycho-social evaluations, and/or medical evaluations concerning:

<i>Name of Student:</i>	<i>DOB:</i>
<i>School Where Enrolled:</i>	<i>Grade:</i>
<i>Between the (School/School System) and</i> (Hospital, Clinic, Institution, Association, or School) (Address, include City, State, Zip)	
<i>Name of Contact Person:</i>	<i>Phone:</i>

<i>Name of Person Giving Consent (Print):</i>	<i>Relationship:</i>
<i>Signature:</i>	<i>Date:</i>

_____ Release all information

_____ Release the checked information

- _____ 1. General identifying (name, address, birth date, grade level completed, grades, class standing, attendance record)
- _____ 2. Standardized Achievement and Aptitude Test Scores
- _____ 3. Personality and Interest Scores
- _____ 4. Teacher ratings
- _____ 5. Record of extracurricular activities
- _____ 6. Individualized education programs
- _____ 7. Psychological reports
- _____ 8. Medical reports
- _____ 9. Psychiatric reports
- _____ 10. Other (Specify) _____

Please return to:

Copies to: _____ Parent/guardian
 _____ School Section 504 file
 _____ District Section 504 coordinator

Sample Letter to Physician Regarding Medical Concerns

(Date)

Dear Dr. _____:

A referral has been initiated for _____ (student's name), _____ (date of birth) of _____ (address) under Section 504 of the Rehabilitation Act of 1973. The reason(s) for the referral is/are:

[Type reason(s) here]

Since the questions presented are relative to medical concerns and it appears these concerns are affecting a "major life activity" or "major bodily function" we would appreciate your input. Please complete the attached questionnaire. A release of information has been signed by the parent/guardian and is attached for your convenience.

If you have any questions regarding this request, please do not hesitate to contact me.

Thank you in advance for your assistance.

Sincerely,

(Name and Title)

Cc: Parent

Sample Physician Questionnaire for Medical Concerns

Student _____ DOB _____

Parent/Guardian _____ Telephone _____

School _____ Grade _____

1. Detail available medical background, including a written diagnostic statement and copies of any/all reports.
2. In your opinion, how do these difficulties “substantially limit” this student’s ability to receive and/or benefit from the education program/activity?
3. Recommendations for consideration at an upcoming conference.

Please attach any reports pertinent to the medical/educational needs of this child.

Please forward a copy to _____ (name) _____ by _____ (date) _____.

Thank you.

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Parent/Student Rights in Identification, Evaluation, and Placement

The following is a description of the rights granted to students with a disability by Section 504 of the Rehabilitation Act of 1973, a civil rights statute, which prohibits discrimination against persons with a disability in any program or activity receiving federal financial assistance. The intent of the law is to keep you fully informed concerning decisions about your child and to inform you of your rights if you disagree with any of these decisions.

You have the right to:

1. Have your child take part in, and receive benefits from public education programs without discrimination because of his/her disability;
2. Have your school district advise you of your rights under federal law;
3. Receive notice with respect to identification, evaluation, or placement of your child;
4. Have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes the right to have the school district make reasonable accommodations to allow your child an equal opportunity to participate in school and school-related activities;
5. Have your child educated in facilities and receive services comparable to those provided non-disabled students;
6. Have your child receive special education and related services if s/he is found to be eligible under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act;
7. Have evaluation, education, and placement decisions made based upon a variety to information sources, and by persons who know the student, the evaluation data, and placement options;
8. Have transportation provided to and from an alternative placement setting at no greater cost to you than would have been incurred if the student were placed in a program operated by the district;
9. Have you child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the district;
10. Examine all relevant records relating to decisions regarding your child's identification, evaluation, education program, and placement;
11. Obtain copies of education records at a reasonable cost, unless the fee would effectively deny you access to the records;

12. A response from the school district to reasonable requests for explanations and interpretations of your child's records;
13. Request the amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child. If the school district refuses this request for amendment, it shall notify you within a reasonable time, and advise you of the right to a hearing;
14. File a local grievance;
15. Request voluntary mediation or an impartial hearing related to decisions or action regarding your child's identification, evaluation, educational program or placement. You and the student may take part in the hearing and have an attorney represent you. Written hearing requests must be submitted to the 504 Coordinator/designee of the local school system and include the following information:
 - The reason for the request;
 - A suitable time for the hearing: morning, afternoon, evening;
 - Two possible dates for the hearing; and
 - Whether the hearing will be closed or open to the public

The hearing must be held no less than fifteen (15) days and no more than thirty (30) days from the time you asked for the hearing, unless you agree otherwise, or the impartial hearing officer grants a continuance at the request of one of the parties.

Reasons for the request:

1. Denied identification, evaluation or educational placement of persons who, because of a disability, need or are believed to need special education or related services.
2. Placed in a setting which is not the least restrictive environment.
3. Denied appropriate services due to inaccessibility of programs.
4. Denied modifications to regular education program because of identified disability.
5. Denied participation in extracurricular and nonacademic activities because of disability.

16. Ask for payment of reasonable attorney fees.

The person in (School System) who is responsible for ensuring compliance with Section 504 is:

District Section 504 Coordinator
Telephone Number

Sample Receipt of Rights

Student Name: _____

DOB: _____ Student ID No.: _____ Grade: _____

School: _____ Teacher: _____

This is to verify that I have received a copy of the Section 504 *Parent and Student Rights in Identification, Evaluation, and Placement*, which informs me of my rights throughout the child-centered educational process. The rights have been explained to me by:

_____	_____
Name	Position

on _____
Date

I understand that my rights include the right to receive:

- (1) This and all other written notices in the language that I understand (primary language or, if needed, a translation of such orally, in sign language, or Braille, as appropriate, and
- (2) Answers from school personnel to additional questions I/we may have.

My signature below indicates that I received a copy of the Section 504 *Parent and Student Rights in Identification, Evaluation, and Placement* and understand its contents.

Signature of Parent/Guardian

Date

Signature of Parent/Guardian

Date

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Review Notice

Date: _____

Student Name: _____

DOB: _____ Student ID No.: _____ Grade: _____

School: _____ Teacher: _____

Dear Parent(s)/Guardian(s):

Your child has been receiving services under Section 504 of the Rehabilitation Act of 1973. The Section 504 Review Committee will convene to consider current data as they reevaluate the educational services your child is now receiving. In order to continue to receive 504 services, you will need to provide the following current documentation:

The meeting will be held:

Date: _____ Time: _____ Place: _____

Should you have any questions or concerns, please feel free to contact the Building Section 504 Coordinator at the number listed below.

Sincerely,

Section 504 Building Coordinator: _____

Telephone: _____

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Section 504 Student Eligibility/Service Plan Form

Date of Meeting: _____

Student Name: _____

DOB: _____ Student ID No.: _____ Grade: _____

School: _____ Teacher: _____

[illegible]

Referral

1. Describe the nature of the concern.
2. What is the mental or physical impairment?
3. Describe how the impairment substantially limits the student's ability to participate in or benefit from the educational program.

Classroom Schedule (List all classes/teachers)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Eligibility

Student is eligible under Section 504? _____ Yes _____ No

- If yes, recommended accommodations/services:

- If no, Team recommendations:

Additional comments:

Person responsible for implementation: _____

Section 504 Team

<u>Name</u>	<u>Title</u>	<u>Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Section 504 Parental Rights were given and explained to parent(s)/guardian(s):

_____ Yes Date: _____
_____ No

Reevaluation Date: _____

****Comprehensive reevaluations must be conducted at least every three (3) years after the initial assessment****

Signature: _____ Date: _____
(Parent/guardian)

Signature: _____ Date: _____
(Parent/guardian)

Copies to: _____ Parent/guardian
 _____ School Section 504 file
 _____ District Section 504 coordinator

Sample Student Service and Accommodation Plan

Date Plan Developed: _____

Student Name: _____

DOB: _____ Student ID No.: _____ Grade: _____

School: _____ Teacher: _____

.....

Disability (as identified by the Section 504 Committee): _____

I. Accommodations necessary for the student to access educational programs and activities:

A. Academics	
Need (as determined through evaluation information)	Accommodation (necessary to meet need)

B. Non-Academics/Extracurricular	
Need (as determined through evaluation information)	Accommodation (necessary to meet need)

- II. Health Plan *(School Nurse must participate in writing this section. Student's physician should also be consulted)*

Summary of medical needs and current medications	
Action	Person Responsible

- III. Evacuation Plan *(Student's physician should be consulted. Nurse(s)/physical therapist may need to participate)*

Action	Person Responsible

Person responsible for disseminating this plan to appropriate staff:

(Name/Position)

Next Review date: _____

Signature: _____
(Parent/guardian)

Date: _____

Signature: _____
(Parent/guardian)

Date: _____

Copies to: _____ Parent/guardian
 _____ School Section 504 file
 _____ District Section 504 coordinator

Sample Alternative Learning Plan

Section 504
Reasonable Modifications for

(Student's Name)

- _____ Mark the student's correct and acceptable work, not his/her mistakes.
- _____ Examinations and quizzes should be given orally.
- _____ Reading assignments should be presented on audio medium.
- _____ Make arrangements for homework assignments to reach home with clear, concise directions.
- _____ Reversals and transpositions of letters and numbers should not be marked wrong. Instead, reversals or transpositions should be pointed out for correction.
- _____ Recognize and give credit for student's oral participation in class.
- _____ Provide extra test time.
- _____ Student should be allowed to record classroom lectures or discussions.
- _____ Student should be allowed to copy another student's class notes.
- _____ Student should be provided a copy of another student's class notes.
- _____ Utilization of peer tutoring.
- _____ Utilization of cross-age tutoring.
- _____ Avoid placing student under pressure of time or competition.
- _____ Accept homework papers typed by the student or dictated by him and recorded by someone else, if need be.
- _____ Do not return handwritten work to be copied over, paper is often not improved and student's frustration is added to.
- _____ Quietly repeat instructions to student after they have been given to the class; then have student repeat and explain directions to you.
- _____ Let the student dictate themes or answers to questions on audio medium.

_____ Accompany oral directions with written directions for child to refer to (on blackboard or paper)

_____ Do not require lengthy outside reading assignments.

_____ Student should be permitted to use cursive writing.

_____ Other:

Comments:

Person responsible for disseminating this plan to appropriate staff:

(Name/Position)

Next Review date: _____

Signature: _____
(Parent/guardian)

Date: _____

Signature: _____
(Parent/guardian)

Date: _____

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Student Behavior Plan

Date Plan Developed: _____

Student Name: _____

DOB: _____ Student ID No.: _____ Grade: _____

School: _____ Teacher: _____

.....

Disability (as identified by the Section 504 Committee): _____

A. Behavior(s) to be addressed:

1. _____

2. _____

3. _____

B. Cause(s)/Trigger(s) for behavior(s) in school setting:

1. _____

2. _____

3. _____

C. Change(s) in school environment necessary to lessen behavior(s):

	Change	Responsible Person(s)
Behavior 1.		
Behavior 2.		
Behavior 3.		

D. Step(s) to be followed by school staff to respond to behaviors:

	Steps	Responsible Person(s)
Behavior 1.		
Behavior 2.		
Behavior 3.		

Person responsible for disseminating this plan to appropriate staff:

(Name/Position)

Next Review date: _____

Signature: _____
(Parent/guardian)

Date: _____

Signature: _____
(Parent/guardian)

Date: _____

Copies to: _____ Parent/guardian
_____ School Section 504 file
_____ District Section 504 coordinator

Sample Policy – Due Process Hearing Procedures

Section 504 of the Rehabilitation Act of 1973 provides the right to an impartial due process hearing if a parent wishes to contest any action of the (District) with regard to a child's identification, evaluation, and placement under Section 504. This provision is found within 34 CFR §104.36. If a parent/guardian requests a Section 504 hearing with the (District), the parent/guardian has the right to personally participate and to be represented by at the hearing by an attorney or advocate at the parent's expense.

Contested actions or omissions that are appropriate for a Section 504 hearing with the (District) should involve identification, evaluation, or placement issues involving a child who has or is believed to have a disability.

Request for Due Process

A parent/guardian who wishes to challenge the (District's) action or omission with regard to the identification, evaluation, or placement of a student who has or is believed to have a disability as defined by Section 504, shall make a written request for a due process hearing to the (District's) Section 504 coordinator. If a request is received orally, it should be reduced to writing or the parent/guardian should be provided a form to reduce the request to writing. The written request must make clear that the parent is seeking a due process hearing under Section 504 before an impartial Section 504 hearing officer. The written request must be made on a form provided by the (District) for that purpose. If the intent to seek a due process hearing is not clear from the face of the request, the (District's) Section 504 coordinator may contact the parent to clarify the request and ascertain whether the parent wishes to initiate a Section 504 due process hearing. The coordinator may also assist the parent in clarifying any questions regarding due process rights under Section 504. Timelines for the appointment of a hearing officer will not begin until it is clear from the parent/guardian's request for due process that the dispute at issue is regarding the Section 504 identification, evaluation or placement of a child. If after such communication, the (District) is still unsure whether the parent is requesting a due process hearing under Section 504, the (District) shall initiate due process procedures, and appointed hearing officer will hold a pre-hearing conference to decide whether the parent is seeking a due process hearing under Section 504, and whether the hearing office has jurisdiction to entertain the claims and issues raised by the parent.

Hearing Officer

The (District) will appoint an impartial hearing officer to preside over the hearing and issue a decision. Such appointment will be made within fifteen (15) days of the date of receipt of a clear request for a due process hearing. The hearing officer will be hired by the (District) as an independent contractor at no expense to the parent. The hearing officer that is appointed shall not be a current employee of the (District), and shall not be related to any member of the (District's) local board of education. The hearing officer need not be an attorney, but shall be familiar with the requirements of Section 504 and the (District's) hearing procedures under Section 504. The District's choice of an impartial hearing officer is final and may not be presented as an issue at the due process hearing, since such an issue would not relate to the identification, evaluation, or placement of a disabled child under Section 504. If a parent/guardian disputes the impartiality of the appointed hearing officer, s/he may raise such issue in a review of the hearing officer's opinion by a court of competent jurisdiction or in a complaint to the

Office for Civil Rights. The regional office which covers Tennessee is: U.S. Department of Education Office for Civil Rights - Atlanta | 61 Forsythe Street, SW, Suite 19T70 | Atlanta, GA 30303 | (404-974-9406).

Scheduling of Hearing

The appointed hearing officer shall issue an Order Setting Hearing Date to the parent/guardian and the (District's) Section 504 coordinator in writing. Such Order shall set a date for the hearing to be held within fifteen (15) days of the date of issuance of the hearing officer's Order. The Order shall also set forth a mutually agreeable time and place for the hearing.

Continuances

Upon a showing of good cause, the hearing officer, at his/her discretion may grant a continuance of the hearing date and set a new hearing date by issuing a written Amended Order Setting Hearing.

Legal Representation at Hearing

The (District) will not have legal representation at the hearing unless the parent notifies the (District) that they will have legal representation. If a parent/guardian is represented by a licensed attorney at the due process hearing, s/he must inform the (District's) Section 504 coordinator and the appointed hearing officer of that fact, in writing, at least seven (7) calendar days prior to the hearing date, or the hearing can be continued upon the (District's) request.

Pre-Hearing Conference

The hearing officer may order a Pre-Hearing Conference during which the parent/guardian or his/her representative will state and clarify the issues to be addressed at the hearing. The Pre-Hearing Conference will also serve to resolve preliminary matters, clarify jurisdictional issues, and answer the parties' questions regarding the hearing process. The Pre-Hearing Conference can be held via telephone or in person depending on the Hearing Officer's decision based on the convenience to both parties.

Dismissals

If, after the Pre-Hearing Conference, the hearing officer finds that the parent, as a matter of law, alleges and/or raises no factual claims or legal issues that come within his/her jurisdiction as a Section 504 hearing officer, s/he may dismiss the hearing and issue an order to that effect explaining the basis for such finding.

Hearing

The hearing shall be conducted in an informal, non-adversarial manner. The parties shall address the hearing officer by name (i.e. Mr. or Ms.). The hearing shall be closed or open to the public as the parent/guardian's request. The federal nor the Tennessee Rules of Evidence or Procedure will apply. The hearing officer may reasonably limit testimony and introduction of documentary exhibits for reasons or relevance.

Recording

Instead of a formal written transcript produced by a court reporter, the entire due process hearing will be tape-recorded. The parent/guardian may obtain a copy of the tape-recording, at his/her request. In order for an accurate recording to be made, the parties and witnesses shall introduce themselves at the beginning of their presentations. If a parent/guardian proceeds to a review of the due process hearing decision to a court of competent jurisdiction, the (District) will prepare a written transcript of the hearing tape-recording to be offered to the court as an exhibit.

Witnesses

Witnesses will present their information in narrative form, without the traditional question and answer format of legal proceedings. Cross-examination of witnesses will not be allowed, but a party may request that the hearing officer, at his/her discretion, ask a witness a certain question.

Format of Presentation

Each side will have an equal amount of time to present their positions to the hearing officer, who will make the determination as to time constraints based upon the issues involved. The parent/guardian will present its case first, by making an opening statement, which outlines the parent/guardian's position on all issues, presenting personally, calling additional witnesses, and making a closing argument. The (District) will present its side next. All of the preceding may be done either personally or through counsel, except for personal presentations or statements. At the end of the (District's) presentation, the parent/guardian may offer a short response to the (District's) case.

Submission of Documentary Exhibits

As part of their presentations, the parties may submit any reports, evaluations, correspondence, notes, or any other documents that may support their positions and that the hearing officer will admit at his /her discretion. Exhibits submitted to the hearing officer by either party must be marked. The hearing officer may, in the exercise of his/her discretion, reasonably limit the number of documents to be submitted for his/her review, as well as the number of witnesses and the length and/or scope of their presentations or statements.

Closing Argument/Briefs

The hearing officer may allow or request written closing arguments summarizing and characterizing the information presented at the hearing; and provide legal authority in support of each party's position. The hearing officer will set time lines for their submission at the conclusion of the hearing.

Decision

The hearing officer may make an oral ruling at the conclusion of the hearing or take the case under advisement; but, in all cases, the hearing officer shall issue a written opinion addressing and ruling on all issues raised by the Petitioner, indicating what corrective action, if any, the (District) must take. Formal findings of fact and conclusions of law are not required. Any issue or claim raised by the parent/guardian that is left unaddressed by the hearing officer in his/her decision will be deemed to have been denied. The hearing officer should include in his/her decision that the unaddressed issues/claims have been denied. The decision must be issued within forty-five (45) days after the date the Request for a Due Process Hearing is received by the district. The hearing officer may not award attorneys' fees as a part of the relief granted to a parent/guardian or the district.

Review Procedure/Appeal

If the parent/guardian is not satisfied by the decision of the hearing officer, s/he may seek review of the hearing decision in a court of competent jurisdiction (generally the closest federal district court).

Complaints to the Office for Civil Rights (OCR)

A parent/guardian may file a complaint with the Office for Civil Rights (OCR) if s/he believes that the (District) has violated any provision or regulation of Section 504. The filing of a complaint does not affect the hearing process or the time lines set forth above. OCR addresses Section 504 complaints separately and independently of the local hearing process, in accordance with the guidelines set forth in OCRs Case Processing Manual. A parent/guardian should contact OCR or consult its Case Processing Manual concerning timeframes for filing OCR complaints.

The OCR office for Tennessee is located at:

Atlanta Office
Office for Civil Rights
U.S. Department of Education
61 Forsyth St. S.W., Suite 19T10
Atlanta, GA 30303-8927

Telephone: 404-974-9406
FAX: 404-974-9471; TDD: 877-521-2172
Email: OCR.Atlanta@ed.gov

The OCR National Headquarters is located at:

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education
Bldg
400 Maryland Avenue, SW
Washington, DC 20202-1100

Telephone: 800-421-3481
FAX: 202-453-6012; TDD: 877-521-2172
Email: OCR@ed.gov

Sample Request for Section 504 Due Process Hearing

Student's Name: _____ Date of Birth: _____

Student's Address: _____

School: _____

Parent/Guardian's Name: _____

Parent/Guardian's Address: _____

Parent/Guardian's Phone Number(s): _____

I am requesting that a Section 504 Due Process Hearing be scheduled regarding the following issues:

☐ Section 504 identification: _____

☐ Section 504 evaluation: _____

☐ Section 504 placement: _____

Parent/Guardian/Authorized Representative Signature

Date

Return this form by FAX or MAIL to:

Name and/or Title

Address

Telephone No